

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY APRIL 19, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1965

**Introduced by Assembly Members Lieu and Saldana
(Principal coauthor: Assembly Member Calderon)
(Coauthor: Assembly Member Laird)**

February 6, 2006

An act to ~~add Section 23038 to~~ *amend Section 1281 of the Code of Civil Procedure, to add and repeal Chapter 2.5 (commencing with Section 23040) of Division 10 of the Financial Code, and to add Section 823.5 to the Military and Veterans Code, relating to deferred deposit transactions.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1965, as amended, Lieu. Deferred deposit transactions: *military borrowers*.

Existing law provides certain protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law, *the California Deferred Deposit Transaction Law (CDDTL)*, provides for the licensure and regulation of persons making deferred deposit transactions, which are transactions whereby a person defers depositing a customer's personal check until a specific date

pursuant to a written agreement. *Under existing law, a violation of the CDDTL is punishable as a crime.*

~~This bill would authorize service members a military borrower, as defined, and their spouses, to defer payments on and to enter into a repayment plan with respect to deferred deposit transactions, as provided.~~ *This The bill would prohibit persons licensees making deferred deposit transactions from engaging in specified practices with respect to those deferred deposit transactions and would require those persons to honor repayment agreements that are negotiated, as specified, before entering into such a transaction with a military borrower, to provide a statement to the borrower explaining his or her rights, as specified. The bill would require the Commissioner of Corporations to enact regulations to implement these provisions and to give notice to licensees, as specified. The bill would provide that a licensee who does not enter into deferred deposit transactions with service members shall not be guilty of or liable for discrimination, as specified. The bill would repeal these provisions on January 1, 2009, unless that date is extended by a subsequently enacted statute. Because the bill would specify additional requirements under the CDDTL, the violation of which would be punishable as a crime, it would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 1281 of the Code of Civil Procedure is*
- 2 *amended to read:*
- 3 *1281. (a) A written agreement to submit to arbitration an*
- 4 *existing controversy or a controversy thereafter arising is valid,*
- 5 *enforceable and irrevocable, save upon such grounds as exist for*
- 6 *the revocation of any contract.*
- 7 *(b) Notwithstanding any other provision of law, a written*
- 8 *agreement between a military borrower, as defined in Section*

1 23040 of the Financial Code, and a licensee, as defined in
2 Section 23001 of the Financial Code, to submit to arbitration an
3 existing controversy or a controversy thereafter arising is not
4 valid if the agreement was entered into in violation of Section
5 23041 of the Financial Code.

6 SEC. 2. Chapter 2.5 (commencing with Section 23040) is
7 added to Division 10 of the Financial Code, to read:

8
9 CHAPTER 2.5. MILITARY BORROWERS

10
11 23040. The following definitions apply for purposes of this
12 chapter:

13 (a) "Date of deployment" means the date that the service
14 member is called to duty in a combat or combat support position.
15 It does not include temporary duty for the sole purpose of
16 training or processing or a permanent change of station.

17 (b) "Military borrower" means a service member or the
18 spouse of a service member who has used the service member's
19 income to enter into a deferred deposit transaction.

20 (c) "Service member" means all of the following individuals:

21 (1) Active duty members of the Armed Forces of the United
22 States.

23 (2) Officers and enlisted members of the state militia called or
24 ordered into active state service for a period of 30 days or more
25 by the Governor pursuant to the provisions of Section 128, 143,
26 or 146 of the Military and Veterans Code or into active federal
27 service for a period of 30 days or more by the President of the
28 United States pursuant to Title 10 or Title 32 of the United States
29 Code.

30 (3) Reservists of the United States Military Reserve who have
31 been called to full-time active duty for a period of 30 days or
32 more.

33 23041. (a) A licensee shall not take any of the following
34 actions with respect to a deferred deposit transaction marketed
35 to a service member or a service member's spouse or entered
36 into with a military borrower:

37 (1) Collect on a deferred deposit transaction entered into by
38 the military borrower by garnishing any of the service member's
39 military pay.

1 (2) Attempt to collect on a deferred deposit transaction by
2 contacting the military chain of command, unless the contact is
3 made in writing as a notice for informational purposes only.

4 (3) Make a deferred deposit transaction from a specific
5 location to a person that the licensee knows is a service member
6 or the spouse of a service member when the service member's
7 commander has notified the licensee in writing that the specific
8 location is designated off-limits to military personnel under his
9 or her command.

10 (4) Directly market deferred deposit transactions to a service
11 member or the spouse of a service member in a manner that
12 suggests a military affiliation with a deferred deposit transaction
13 product.

14 (5) Require a military borrower to waive any rights or
15 procedures as a condition of a deferred deposit transaction,
16 including the borrower's right to file and pursue a civil action
17 pursuant to Section 23064.

18 (6) Refuse to transact with a military borrower or otherwise
19 discriminate against a military borrower because he or she
20 refuses to waive any rights or procedures, including the rights
21 and procedures provided for in this division.

22 (b) A waiver of rights or procedures by a military borrower
23 shall be knowing and voluntary and shall not be a condition of a
24 deferred deposit transaction. Any waiver, including an
25 agreement to arbitrate a claim under the deferred deposit
26 transaction law or any other law relating to the deferred deposit
27 transaction, that is required as a condition of the deferred
28 deposit transaction in violation of paragraph (5) or (6) of
29 subdivision (a) shall be deemed involuntary, unconscionable,
30 against public policy, and unenforceable.

31 (c) A licensee that enters into a deferred deposit transaction
32 with a military borrower has the burden of proving that any
33 waiver of rights or procedures by the military borrower with
34 respect to the transaction, including any agreement to arbitrate a
35 claim, was knowingly and voluntarily made by the military
36 borrower and was not a condition of the transaction. A licensee
37 shall be deemed to have met this burden if it can prove both of
38 the following:

39 (1) The customer had a clearly disclosed right to reject the
40 agreement to arbitrate a claim under this division or under any

1 *other law relating to the transaction in accordance with the*
2 *terms of the agreement to arbitrate.*

3 *(2) The exercise of the right by the customer to reject the*
4 *agreement to arbitrate did not affect any other term of the*
5 *transaction.*

6 *23042. (a) Notwithstanding any other provision of law, a*
7 *military borrower may defer payments on a deferred deposit*
8 *transaction he or she entered into prior to the date of the service*
9 *member's deployment.*

10 *(b) To defer payment on a deferred deposit transaction, the*
11 *military borrower or his or her representative shall deliver to the*
12 *licensee a letter signed by the military borrower or his or her*
13 *representative requesting deferral of payment on the deferred*
14 *deposit transaction, providing the expected duration of*
15 *deployment and acknowledging the military borrower's*
16 *responsibilities for repayment of the amount owing on the*
17 *deferred deposit transaction.*

18 *(c) Pursuant to subdivision (b) of Section 23036, the licensee*
19 *shall not charge an additional fee, interest, finance charge, or*
20 *any other charge for deferral of payment on the deferred deposit*
21 *transaction during the period of deployment and for 30 days*
22 *following the service member's return from deployment.*

23 *(d) The payment on the deferred deposit transaction shall be*
24 *deferred for the duration of the service member's deployment*
25 *and shall apply only to a deferred deposit transaction entered*
26 *into by the military borrower prior to the date of deployment.*
27 *The amount of the payment deferred under this section shall be*
28 *due in full 30 days after the date of the service member's return*
29 *from deployment, unless the military borrower requests a*
30 *repayment plan pursuant to Section 23043.*

31 *23043. (a) The licensee shall grant a military borrower a*
32 *repayment plan upon written request by the military borrower.*

33 *(b) The repayment plan shall have the following provisions:*

34 *(1) A term of, at minimum, 120 days.*

35 *(2) At least three payments, consisting of an initial payment*
36 *due not sooner than 13 days following the execution date of the*
37 *repayment plan, with all subsequent payments due, at minimum,*
38 *13 days apart from each other. A licensee may require that the*
39 *payment dates in the repayment plan coincide with the service*
40 *member's pay dates.*

1 (3) All payments shall be approximately equal in amount,
2 unless otherwise agreed to by the licensee and the military
3 borrower.

4 (c) Pursuant to subdivision (b) of Section 23036, the licensee
5 shall not charge the military borrower directly or indirectly any
6 finance charges, interest, fees, or other charges for requesting or
7 using a repayment plan.

8 (d) Performance of the terms of the repayment plan
9 extinguishes the military borrower's obligation on the deferred
10 deposit transaction.

11 (e) Upon the military borrower making all payments required
12 under the repayment plan, the licensee shall return the uncashed
13 check originally used as the basis for the deferred deposit
14 transaction to the military borrower.

15 (f) If the military borrower fails to make a payment under the
16 repayment plan within five days of its due date, the licensee may
17 initiate efforts to collect the total amount owing under the
18 repayment plan.

19 (g) The military borrower or the military borrower's
20 representative may prepay any amount due under the repayment
21 plan at any time without charge or penalty.

22 (h) Notwithstanding any other provision of law, a licensee
23 shall not make a deferred deposit transaction with a military
24 borrower in either of the following circumstances:

25 (1) When the licensee knows that the military borrower has a
26 repayment plan with another licensee with remaining payments
27 due under it.

28 (2) Within 14 days of the military borrower's payment of all
29 payments required under the repayment plan with the licensee.

30 (i) A repayment plan granted to a military borrower under this
31 section is an extension of payment terms under the original
32 deferred deposit transaction agreement and is governed by this
33 section and this division. A repayment plan is not a loan and is
34 not subject to any other law or regulation governing the granting
35 of credit.

36 23044. (a) Before engaging in a deferred deposit transaction
37 with a military borrower, a licensee shall provide to the military
38 borrower a written statement in at least 10-point type that clearly
39 and conspicuously states the prohibited practices and special
40 rights a military borrower is afforded by law. The statement shall

1 *include, but is not limited to, information describing the*
2 *following matters:*

3 *(1) The opportunity for deferral of payments on a deferred*
4 *deposit transaction under Section 23042.*

5 *(2) The special rights to a repayment plan under Section*
6 *23043.*

7 *(3) The right of a military borrower to refuse to agree to*
8 *binding arbitration with respect to any deferred deposit*
9 *transaction into which he or she enters.*

10 *(4) The inability of a licensee to charge any additional fee,*
11 *interest, finance charge, or other charge of any kind as a*
12 *condition of granting a repayment plan or during the period of*
13 *the repayment plan.*

14 *(b) The statement required by subdivision (a) shall include the*
15 *following:*

16 *"THE SIGNING OF A REQUIREMENT FOR BINDING*
17 *ARBITRATION IS VOLUNTARY AND IS NOT A CONDITION*
18 *OF THIS AGREEMENT. BEFORE SIGNING ANY BINDING*
19 *ARBITRATION AGREEMENT, OR THIS AGREEMENT, YOU*
20 *SHOULD CONSULT A FINANCIAL COUNSELOR OR*
21 *ADVISOR AT YOUR MILITARY COMMAND."*

22 *23044.2. The commissioner shall enact regulations specifying*
23 *the content of any statement required under this chapter. The*
24 *commissioner shall also mail notices to licensees informing them*
25 *of changes in the law regarding deferred deposit transactions*
26 *and service members.*

27 *23044.3. A licensee that does not market deferred deposit*
28 *transactions to, or enter into those transactions with, service*
29 *members shall not be in violation of Section 394 of the Military*
30 *and Veterans Code.*

31 *23044.4. All other provisions of this division shall apply to*
32 *this chapter.*

33 *23044.5. This chapter shall remain in effect only until*
34 *January 1, 2009, and as of that date is repealed, unless a later*
35 *enacted statute, that is enacted before January 1, 2009, deletes*
36 *or extends that date.*

37 *SEC. 3. Section 823.5 is added to the Military and Veterans*
38 *Code, to read:*

39 *823.5. Notwithstanding any other provision of law, a service*
40 *member, as defined in Section 23040 of the Financial Code, shall*

1 *be afforded the rights and privileges contained in Chapter 2.5*
2 *(commencing with Section 23040) of Division 10 of the Financial*
3 *Code.*

4 *SEC. 4. It is the intent of the Legislature in enacting Chapter*
5 *2.5 (commencing with Section 23040) of Division 10 of the*
6 *Financial Code not to hamper efforts by the federal government*
7 *to address the problem of payday lending to the military.*

8 *SEC. 5. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution because*
10 *the only costs that may be incurred by a local agency or school*
11 *district will be incurred because this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the*
13 *penalty for a crime or infraction, within the meaning of Section*
14 *17556 of the Government Code, or changes the definition of a*
15 *crime within the meaning of Section 6 of Article XIII B of the*
16 *California Constitution.*

17 ~~SECTION 1. Section 23038 is added to the Financial Code,~~
18 ~~to read:~~

19 ~~23038. (a) Any licensee that makes a deferred deposit~~
20 ~~transaction to a service member or the service member's spouse~~
21 ~~shall defer payment on that deferred deposit transaction pursuant~~
22 ~~to Section 823.5 of the Military and Veterans Code.~~

23 ~~(b) A licensee shall not do any of the following:~~

24 ~~(1) Collect on a deferred deposit transaction entered into by~~
25 ~~the service member or the service member's spouse by~~
26 ~~garnishing any of the service member's military pay.~~

27 ~~(2) Contact the service member's military superiors regarding~~
28 ~~a deferred deposit transaction entered into by the service member~~
29 ~~or the service member's spouse.~~

30 ~~(3) Make a deferred deposit transaction from a specific~~
31 ~~location to a person that the licensee knows is a service member~~
32 ~~or knows is the spouse of a service member when the service~~
33 ~~member's commander has notified the licensee in writing that the~~
34 ~~specific location is designated off-limits to military personnel~~
35 ~~under his or her command.~~

36 ~~(e) A licensee shall honor the terms of any repayment~~
37 ~~agreement negotiated through military counselors or third-party~~
38 ~~credit counselors. Any repayments under the agreement shall not~~
39 ~~commence until after the deferral period specified in subdivision~~
40 ~~(e) of Section 823.5 of the Military and Veterans Code.~~

1 ~~(d) For the purposes of this section, “service member” means:~~

2 ~~(1) Active duty members of the Armed Forces of the United~~
3 ~~States assigned to a combat or combat support position.~~

4 ~~(2) Officers and enlisted members of the National Guard~~
5 ~~called or ordered into active state service by the Governor~~
6 ~~pursuant to the provisions of Section 143 or 146 of the Military~~
7 ~~and Veterans Code or into active federal service by the President~~
8 ~~of the United States, pursuant to Title 10 or Title 32 of the United~~
9 ~~States Code, for a period of 30 days or more.~~

10 ~~(3) Reservists of the United States Military Reserve who have~~
11 ~~been called to full-time active duty for a period of 30 days or~~
12 ~~more.~~

13 ~~SEC. 2. Section 823.5 is added to the Military and Veterans~~
14 ~~Code, to read:~~

15 ~~823.5. (a) Notwithstanding any other provision of law, any~~
16 ~~service member or the service member’s spouse may defer~~
17 ~~payments on any deferred deposit transaction entered into by the~~
18 ~~service member or the service member’s spouse prior to the~~
19 ~~service member’s date of deployment.~~

20 ~~(b) To defer payments on a deferred deposit transaction, the~~
21 ~~service member or the service member’s spouse shall deliver to~~
22 ~~the deferred deposit transaction provider a letter signed by the~~
23 ~~service member or the service member’s spouse requesting~~
24 ~~deferral of payment on the deferred deposit transaction.~~

25 ~~(c) The deferral period on the deferred deposit transaction~~
26 ~~shall be for a period of 180 days and shall apply only to any~~
27 ~~deferred deposit transaction entered into by the service member~~
28 ~~or the service member’s spouse prior to the date of deployment.~~
29 ~~The amount of the deferred deposit transaction shall be due in~~
30 ~~full on the deferred deposit transaction provider’s next business~~
31 ~~day immediately following the end of the deferral period.~~

32 ~~(d) For purposes of this section:~~

33 ~~(1) “Date of deployment” means the date that the service~~
34 ~~member met the definition of a service member as defined in~~
35 ~~subdivision (d) of Section 23038 of the Financial Code. It does~~
36 ~~not include temporary duty for the sole purpose of training or~~
37 ~~processing or a permanent change of station.~~

- 1 ~~(2) “Service member” has the same meaning as in subdivision~~
- 2 ~~(d) of Section 23038 of the Financial Code.~~

O